

CHARLENE CARTER vs SOUTHWEST AIRLINES and

3:17-cv-02245-X

June 16, 2022

1                   UNITED STATES DISTRICT COURT  
2                   NORTHERN DISTRICT OF TEXAS

3                   CASE NO. 3:17-cv-02245-X

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5                   -----x

6   CHARLENE CARTER,

7                   Plaintiff,

8   v.

9   SOUTHWEST AIRLINES CO. and,  
10   TRANSPORT WORKERS OF AMERICA,  
11   LOCAL 556,

12                   Defendants.

13                   -----x

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16                   TRANSCRIPT OF THE PRETRIAL CONFERENCE

17                   BEFORE THE HONORABLE BRANTLEY STARR

18                   UNITED STATES DISTRICT JUDGE

19

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21                   Dallas, Texas

22                   June 16, 2022

23                   9:02 a.m.

24

25

**EXHIBIT 2**

1 A P P E A R A N C E S : 2 3 FOR THE PLAINTIFFS: 4 5 NATIONAL RIGHT TO WORK FOUNDATION INC. 6 8001 Braddock Street 7 Suite 600 8 Springfield, Virginia 22160 9 BY: MATTHEW B. GILLIAM, ESQ. 10 mgb@nrtw.org 11 (703) 321-8510 12 13 PRYOR & BRUCE 14 302 North San Jacinto 15 Rockwall, Texas 75087 16 BY: BOBBY G. PRYOR, ESQ. 17 MATTHEW D. HILL, ESQ. 18 bpryor@pryorandbruce.com 19 mhill@pryorandbruce.com 20 21 22 23 24 25	Page 2	1 For the Defendant Union 556: 2 Adam S Greenfield 3 4 CLOUTMAN & GREENFIELD, PLLC 5 3301 Elm Street 6 Dallas, TX 75226 7 BY: ADAM S. GREENFIELD, ESQ. 8 EDWARD B. CLOUTMAN, III, ESQ. 9 agreeenfield@candglegal.com 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 3
1 COURT REPORTER: MS. KELLI ANN WILLIS, RPR, CRR, CSR 2 United States Court Reporter 3 1100 Commerce Street 4 Room 1528 5 Dallas, Texas 75242 6 livenotecrr@gmail.com 7 8 Proceedings reported by mechanical 9 stenography and transcript produced by computer. 10 * * * * 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 4	1 - P R O C E E D I N G S - 2 THE COURT SECURITY OFFICER: All rise. 3 THE COURT: Thank you. You can be seated. 4 Okay. The Court calls Civil Action 5 317-cv-2278-X. That is Carter versus Southwest 6 Airlines and Transport Workers of America, Local 556 7 for pretrial conference. 8 Let's do appearances for the record. 9 MR. GILLIAM: Matthew Gilliam for 10 Plaintiff, along with Matthew Hill and Bobby Pryor. 11 THE COURT: Okay. Thank you. 12 And then how about for Southwest, who do 13 we have here? 14 MR. McKEEBY: Paulo McKeeby along with 15 Brian Morris for the Defendant Southwest. 16 THE COURT: Okay. Thank you. 17 And then how about for Local 556? 18 MR. GREENFIELD: Adam Greenfield, along 19 with Edward Cloutman, III. 20 THE COURT: All right. Thank you. 21 Okay. So is everyone ready for pretrial 22 conference? 23 I know this monitor is always right in the 24 way. I wish I was as tall as Matumbo, because then 25 I could see you perfectly. But I'm short and I	Page 5

<p>1 respect to most of these people, because they are 2 outside of the subpoena power. 3 MR. GREENFIELD: We also received this 4 morning, right outside of the courthouse, subpoenas 5 for Ms. Parker and Mr. Navarez as well. Again, we 6 don't have the ability to really accept these. 7 THE COURT: Well, so I see your point, Mr. 8 McKeeby. But at the end of the day, if they are 9 Southwest employees, can't Southwest compel them to 10 come to trial? 11 MR. MCKEEBY: I -- I -- usually the answer 12 to that question would be, of course. I'm not sure, 13 because of the Union and they are Union members, 14 that it is that simple. I guess I can check and see 15 if that is the case. 16 THE COURT: Dan, I'd like you to check. 17 Because I mean, I have gotten someone here from 18 Spain. That was under the control. Control 19 stretches as far as the corporation does, if that 20 makes sense. 21 And so if a corporation, you know, it is 22 easier for at-will employees, not Union members, but 23 at-will employees, they have to do anything the 24 corporation tells them lawfully to do. 25 MR. MCKEEBY: Well, yes.</p>	<p>Page 142</p> <p>1 But I mean, again, the Union -- you know, 2 existence here is significant. I mean, I could, 3 frankly -- I mean, because it will be unusual for 4 Southwest to reach out to an employee absent some 5 Union contact. And say, Hey, by the way, you have 6 to be at trial in Dallas, oh, by the way, in which 7 the Union is a party. 8 That is going to be a very complicated 9 process. And the employee very likely, if they got 10 that call from, you know, my contact at Southwest 11 Airlines, is going to tell that person, no, I'm not 12 coming to Dallas. You need to talk to my Union. 13 So it is not as simple as in most cases, 14 given the Union presence. 15 MR. GILLIAM: Your Honor, counsel for both 16 Southwest and Local 556, it is as simple enough as 17 coordinating between the two to get some of these 18 witnesses here. 19 THE COURT: And I'm going to have two 20 suggestions. 21 Suggestion one is, could we have a 22 coordinated effort? I know they are no longer Union 23 management and that doesn't necessarily mean -- 24 well, they are no longer under the control of the 25 Union but that doesn't mean the Union has no role.</p>
<p>1 So if there could be coordinated reach 2 out, one, that would be helpful. 3 Two, if you don't hear back in 48 hours 4 that someone from Southwest will accept service of 5 the subpoena, I'm going to suggest you do the 6 subpoena the old way, right? 7 Now, the question is, if they are beyond 8 the subpoena power of the Court, then we are again 9 relying on control of the corporation to get them 10 here, the corporation being Southwest. 11 But if you are here on Rule 45 issues, 12 then I think some of those could be circumvented by 13 you serving those witnesses individually, if that 14 makes sense. 15 MR. GILLIAM: Understood, your Honor. 16 And one of the reasons why we did go that 17 route for some of the witnesses was that on the 18 initial disclosure, Southwest indicated contact 19 certain individual through counsel. Others were not 20 listed on their initial disclosures, but the ones 21 who were, were -- and the same goes for Local 556 22 and Southwest. They said to communicate and contact 23 these people. 24 THE COURT: And that is the normal course 25 because they would prefer that, right? No one wants</p>	<p>Page 144</p> <p>1 to be a flight attendant touching down and then a 2 process server shows up and hands them a trial 3 subpoena. 4 What I'm trying to say is, I will give a 5 48-hour period for Southwest and the Union to work 6 with that person, right? On whether or not they can 7 attend trial, whether or not an attorney for 8 Southwest will accept service of that subpoena for 9 them. 10 Beyond that window, now we are getting 11 into the point where you need to clear off those 12 defects. And if that is a defect, you need to work 13 on clearing it off and serve it the old fashioned 14 way. I give you permission to serve anyone 15 individually. 16 Let me think through it. 17 Let's say, it is Monday at 5 p.m. is sort 18 of my deadline for when I think you have a green 19 light to no longer work through them for service of 20 a subpoena. And you can work separately on service 21 of a subpoena. 22 Even if you serve those subpoenas 23 separately, I think Southwest would still have a 24 continuing duty at that point with a duly-served 25 subpoena to make that person available for trial.</p>

<p>1        But specifics and mechanics, we need to 2 talk through that because I'm not trying to 3 inconvenience these people.</p> <p>4        MR. MCKEEBY: What about people that are 5 outside of subpoena range?</p> <p>6        THE COURT: So, again, if we have the 7 corporation -- I mean, you need to flag for me if 8 there is an Union issue, right? Union, in my mind, 9 and Southwest should both be telling the person, 10 Hey, you are under the control collectively of 11 Southwest and the Union, and Southwest and Union 12 need you at trial because you were subpoenaed.</p> <p>13        MR. MCKEEBY: Okay.</p> <p>14        THE COURT: Now, if I'm wrong on that, 15 tell me I'm wrong, if you have got some case law on 16 that.</p> <p>17        To me, I hear there are two individuals 18 who might have some level of control. If both of 19 them are parties and there is a trial subpoena that 20 is validly served, if not agreed to be accepted, 21 then I think that collective control should be able 22 to get them here.</p> <p>23        MR. MCKEEBY: Okay. Well, I can just tell 24 you that I'm not going to be authorized to accept 25 subpoenas for collective bargaining represented</p>	<p>Page 146</p> <p>1 flight attendants. So they are going to have to 2 subpoena them in the old fashioned way and then we 3 can cooperate at that point.</p> <p>4        THE COURT: So I understand that.</p> <p>5        So no longer on Monday at 5:00 deadline.</p> <p>6        What I will ask is, if the Union or 7 Southwest, or both, could provide location for a 8 process server of where they will be, right? I 9 don't want any hiding of the ball, I don't think 10 y'all will. But because we are on the eve of trial 11 now, they may be chasing them around the country.</p> <p>12        Then that will give y'all -- I mean, if 13 y'all want to tell them, if y'all want to be 14 professional and coordinating, we plan on serving 15 them on this layover and you want to tell them that 16 and give them a heads up and they won't be 17 surprised. I think that would be a professional 18 courtesy, if you can't accept service.</p> <p>19        MR. MCKEEBY: I can try to do that.</p> <p>20        THE COURT: Understood.</p> <p>21        MR. GILLIAM: I can as well.</p> <p>22        MR. MCKEEBY: Just provide their 23 addresses? I think one of the communications that I 24 received last night has residential addresses, so I 25 can provide that as well.</p>
<p>1        THE COURT: Understood.</p> <p>2        I know these are difficult, and with the 3 Union overlay, they are all the more difficult.</p> <p>4        I appreciate y'all working through it. It 5 is a challenge.</p> <p>6        MR. GILLIAM: Your Honor, so it is no 7 longer a Monday deadline. Is there a particular 8 deadline now?</p> <p>9        THE COURT: So here is the thing in my 10 mind. The Monday deadline I was giving you was the 11 deadline to start serving them with the trial 12 subpoena because I understood them to say that they 13 wanted to have a discussion on whether or not to 14 accept service.</p> <p>15        If I understand the current position is, 16 he knows he can't get there, he's saying I can't 17 accept service for under the CBA. In that case, 18 then, I'm no longer sitting you out until Monday at 19 5 to serve them directly. You can serve them 20 directly an hour from now, if you want to and can 21 find them.</p> <p>22        What I'm asking them to do, by the end of 23 the day, provide you with location information of 24 where they will be next week, so that you can serve 25 them.</p>	<p>Page 148</p> <p>1        I would say serve them the sooner the 2 better because that serving is what now opens the 3 dialogue as to scheduling, right?</p> <p>4        And so if you serve them next Friday, it 5 is going to have less time to promote a cooperative 6 schedule than it is if you serve them on Monday or 7 serve them tomorrow.</p> <p>8        Okay. So what other witnesses or buckets 9 do we need to talk about? Because we haven't talked 10 about anyone wholly separately on your list.</p> <p>11        Mr. Greenfield.</p> <p>12        MR. GREENFIELD: There was only four 13 individuals, President Stone -- former President 14 Stone, who has expressed willingness to be here. We 15 will work with the other side on the scheduling on 16 that. The same with former board member, John 17 Parritt.</p> <p>18        It is really the two additional, 19 Ms. Parker and Mr. Navarez, who are, as we have 20 discussed, outside of the subpoena range. They do 21 not live here. They are not within the Union's 22 control. And I guess there is potential issues, I 23 guess, of whether Southwest has the ability to get 24 them here.</p> <p>25        And as Mr. McKeeby has expressed, he</p>

<p>1 knowledge. They were just copied on investigation 2 emails. So I don't think, based on that 3 representation, I'm going to take the extra step and 4 make them sit for a depo in Shaffer.</p> <p>5 Based on that, I still think, if you want 6 to serve Shaffer with a trial subpoena, it sounds 7 like Shaffer is local, right? Within 100 miles. So 8 if you want Shaffer to show up, fine. But Shaffer's 9 status as a former employee means they are certainly 10 not going to accept service. And there is no 11 deposition to talk about. It is just you do a trial 12 subpoena on Shaffer. We know they won't accept it 13 because Shaffer is a former.</p> <p>14 Okay. So Barnett is the last one to talk 15 about. I don't know that Barnett was in any of the 16 other groups we had talked about. So Barnett is now 17 in a new bucket, which is a former employee, who is 18 local.</p> <p>19 Which I think we treat Barnett and Shaffer 20 the same, right? Any reason not to?</p> <p>21 So you need to serve Barnett directly. 22 I'm not going to make Barnett sit for a separate 23 depo, because we don't have an additional disclosure 24 issue running around.</p> <p>25 And if Southwest wants to reach out to any</p>	<p>Page 158</p> <p>1 formers and offer representation, that is fine. 2 That is normal course. They don't have to. Y'all 3 can talk about scheduling, if you want to proceed 4 with Barnett.</p> <p>5 MR. GILLIAM: One point of clarification 6 of the bucket of people no longer employed by 7 Southwest.</p> <p>8 We did talk about earlier also Gutierrez, 9 who has also been deposed, again, no longer employed 10 with Southwest.</p> <p>11 I guess we subpoena her. We can subpoena 12 her directly for trial, but we don't have an address 13 for her.</p> <p>14 MR. McKEEBY: I will provide an address 15 for her.</p> <p>16 THE COURT: I understand she's local. 17 Hopefully, that is within 100 miles, but also 18 cooperating is the note I had.</p> <p>19 If you subpoena her, you will probably end 20 up talking to -- you anyways.</p> <p>21 MR. McKEEBY: I suspect that is right.</p> <p>22 THE COURT: Got it.</p> <p>23 Any other witnesses and availability we 24 should talk about?</p> <p>25 MR. McKEEBY: Yes.</p>
<p>Page 160</p> <p>1 So that brings us to the last bucket of -- 2 I apologize.</p> <p>3 THE COURT: It is okay.</p> <p>4 MR. McKEEBY: My notes are getting a 5 little difficult to read.</p> <p>6 Four current Southwest employees who were 7 on their initial disclosures, who we, again, think 8 have very, very tangential relevance to anything in 9 this case.</p> <p>10 They are Linda Rutherford, Brendon Conlon, 11 Nancy Kleburne, and Sonia Lacore.</p> <p>12 Again, all of which may have been copied 13 on an email, but we are not going to present them as 14 decision makers or involved in providing 15 recommendations with respect to the termination or 16 really being at any of the grievance proceedings 17 leading up to the termination.</p> <p>18 And so, again, we don't feel like those 19 folks are particularly relevant anyway. That is why 20 we didn't list them in our initial disclosures.</p> <p>21 They all, for various reasons, the level 22 of specificity we can get into, not available at 23 least for trial. That is the person in Kuwait, i.e., 24 Ms. Rutherford. Jamaica is Mr. Conlon.</p> <p>25 THE COURT: Can you give me those dates</p>	<p>Page 161</p> <p>1 for Rutherford?</p> <p>2 MR. McKEEBY: Rutherford is July 1st 3 through July 8th.</p> <p>4 THE COURT: All right.</p> <p>5 And then Conlon?</p> <p>6 MR. McKEEBY: Conlon is Jamaica from 7 July 1st through July 8th.</p> <p>8 And then Kleburne has various travels 9 plans between July 5th and July 17th, per this 10 email.</p> <p>11 THE COURT: Are those continuous travel 12 plans?</p> <p>13 MR. McKEEBY: Ohio. And then to Arkansas 14 to see family.</p> <p>15 Southwest gives a lot of very good 16 vacation benefits. So, yes, she's going to be in, 17 it looks like, four different states, between 18 July 5th and July 17th.</p> <p>19 THE COURT: Why not add a fifth? I'm 20 joking. We will get to that at some point.</p> <p>21 Okay. So July 5th to 17th.</p> <p>22 MR. McKEEBY: Right.</p> <p>23 And then Lacore is probably less 24 interesting, but she has -- is going to be in 25 Atlanta for apparently a very critical work</p>

<p>1 function, some type of hospitality summit.</p> <p>2 That is the week of July 11th. And the</p> <p>3 week of July 4th, she's on some type of out-of-town</p> <p>4 vacation, the details of which I do not have.</p> <p>5 And, frankly, with respect to these two,</p> <p>6 it might be the preference for them to sit for an</p> <p>7 hour deposition, as opposed to having to appear at</p> <p>8 trial, given their plans. So I'm not sure how to</p> <p>9 deal with it.</p> <p>10 THE COURT: Understood.</p> <p>11 So let me pitch it to Carter's team now</p> <p>12 and see what the preference is on a path forward on</p> <p>13 these four.</p> <p>14 MR. GILLIAM: What are the preferences?</p> <p>15 THE COURT: Right.</p> <p>16 For example, Rutherford and Conlan, their</p> <p>17 travel dates cutoff July 8th. We will still be</p> <p>18 going after July 8th, but you will be rested by that</p> <p>19 point.</p> <p>20 Do you prefer to pursue an out-of-order</p> <p>21 live fire presentation of them at trial, is my first</p> <p>22 question. Because their timing is a little bit</p> <p>23 different than Kleburne and Lacore's timing, which</p> <p>24 is difficult because it is the entirety of the</p> <p>25 trial.</p>	<p>Page 162</p> <p>1 MR. GILLIAM: If that is the only option,</p> <p>2 then I would say yes.</p> <p>3 THE COURT: For an out-of-order live</p> <p>4 witness presentation?</p> <p>5 MR. GILLIAM: Yes.</p> <p>6 THE COURT: Yes.</p> <p>7 So I think that goes back to my suggestion</p> <p>8 of today, can you tell them, by the end of the day,</p> <p>9 what all witnesses you want and when.</p> <p>10 Now you know those scheduling, so you may</p> <p>11 just present an out-of-order date beyond July 8th,</p> <p>12 where you would take the witness conditionally.</p> <p>13 And then for the other two, if they have</p> <p>14 got these blackouts -- I mean, my inclination on the</p> <p>15 other two, if they are blacked out the entire time,</p> <p>16 then have them sit for a one-hour depo beforehand.</p> <p>17 If they have marginal relevance, you can</p> <p>18 find out what the relevance is. And then you would</p> <p>19 know before trial whether or not you would even read</p> <p>20 a two-minute portion of the transcript.</p> <p>21 That would be my inclination. And if they</p> <p>22 are current employees, then I can order them to sit</p> <p>23 for a depo that occurs after fact discovery.</p> <p>24 MR. GILLIAM: We do view them as relevant,</p> <p>25 I think for the answers that we have already stated.</p>
<p>1 Lacore was copied on President Stone's</p> <p>2 complaint of Carter, when she made her complaint the</p> <p>3 first time.</p> <p>4 Also, Lacore is relevant because President</p> <p>5 Stone negotiated grievances and employee discipline</p> <p>6 with -- specifically social media discipline with</p> <p>7 Lacore, the vice president of in-flight services.</p> <p>8 So, again, it goes to the scope of</p> <p>9 Ms. Stone's official capacity of grievance handling,</p> <p>10 handling social media discipline issues.</p> <p>11 And Kleburne was the manager of</p> <p>12 Southwest's task team, that's their accommodations</p> <p>13 team.</p> <p>14 So any sort of religious accommodation</p> <p>15 would have to be referred to her. And it would be</p> <p>16 significant, even if she didn't handle an</p> <p>17 accommodation issue.</p> <p>18 THE COURT: Understood.</p> <p>19 So I think I have heard enough to say that</p> <p>20 I will have them sit for a one-hour depo, if they</p> <p>21 were not available in trial. And then I will leave</p> <p>22 the scheduling and coordinating of that up to y'all.</p> <p>23 What I think getting we're getting into</p> <p>24 is, we will have at least some trial presentations</p> <p>25 by depo transcript, right? That is where we have</p>	<p>Page 164</p> <p>1 the procedure, show us the full transcript, make</p> <p>2 your depo designations, counter-designations,</p> <p>3 objections, responses.</p> <p>4 And so now we will be doing some of that,</p> <p>5 that is between now and trial, right? So I'm going</p> <p>6 to ask y'all, if you have a deposition in hand for a</p> <p>7 witness who will not be at trial, that is one of</p> <p>8 these one-hour depositions, within 24 hours of getting the</p> <p>9 trial transcript, can you file deposition</p> <p>10 designations with me? That gives me the full</p> <p>11 transcript and the objections. The other side will</p> <p>12 have -- need to come in 24 hours later.</p> <p>13 For example, you objected to form on the</p> <p>14 record 10 times during designated testimony. Here</p> <p>15 is our 10 objections. We said object to form,</p> <p>16 really we meant hearsay.</p> <p>17 And so at 24 and 48 hours after the</p> <p>18 transcript comes in hand, I would like to see those.</p> <p>19 But here is what I do with the depo</p> <p>20 designations, right? I guess it takes a little bit</p> <p>21 different tactic practically if it is a video depo</p> <p>22 or a paper depo.</p> <p>23 If it is a video depo, then I give you all</p> <p>24 of the rulings on the objections that are getting</p> <p>25 pressed so that the videographer can edit out all</p>

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Pages 186..188

1	THE COURT: That is a great question.	Page 186
2	I'm going to let y'all pick. If y'all can	1 sidebar.
3	fit around that table, great. But you are going to	2 (Proceedings concluded at 12:24 p.m.)
4	have corporate reps there. So six chairs around the	3
5	table, you are probably going to want to split up	4
6	into two. It's just my guess.	5
7	After I go off the record, then let's come	6
8	over here and make sure we can test out a sidebar.	7
9	One lawyer for each side come up and we will just	8
10	practice how loud we talk to where we hear each	9
11	other people but the people in the box can't hear.	10
12	I will try to find Mr. Frye and see if	11
13	he's got a beat on looking at the jury assembly room	12
14	and/or the Red River room.	13
15	Anything else?	14
16	All right. Thank you.	15
17	Y'all are great lawyers and this is going	16
18	to be a fun case. We get lots of cases where the	17
19	lawyers just don't know how to be officers of the	18
20	court. And y'all know how to represent your clients	19
21	zealously and be officers of the court.	20
22	Y'all are a tribute to the profession.	21
23	So this is going to be great to try.	22
24	So with that, I will go off the record.	23
25	And let's come over here and we will live-fire a	24
		25
1	C E R T I F I C A T E	Page 188
2		
3	I, Kelli Ann Willis, RPR, CRR, CSR	
4	certify that the foregoing is a transcript from the	
5	record of the proceedings in the foregoing entitled	
6	matter.	
7	I further certify that the transcript	
8	fees format comply with those prescribed by the	
9	Court and the Judicial Conference of the United	
10	States.	
11	This 19th day of June 2022.	
12		
13	s/ Kelli Ann Willis	
14	Official Court Reporters	
15	The Northern District of Texas	
16	Dallas Division	
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18		
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